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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/826,751	04/05/2001	Dwip N. Banerjee	IBM/0002	8833

7590 10/05/2004

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EXAMINER

RUHL, DENNIS WILLIAM

ART UNIT	PAPER NUMBER
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3629

DATE MAILED: 10/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/826,751

Applicant(s)

BANERJEE ET AL.

Examiner

Dennis Ruhl

Art Unit

3629

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2/26/02.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

Art Unit: 3629

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Klein et al. (5726885).

For claims 1-30, Klein discloses a system and method for renting of devices (vehicles). Klein discloses a system Z with a database that stores customer information. A processor D is disclosed that will identify the customer, identify a vehicle for them to use, monitor the device use and charge a fee based on that use. If a car is rented for two days, a two day rental fee is charged. The rate is based on time and is inherently variable (the longer you rent the more you pay overall) . With respect to the recitation that the device is an exercise device, the device is only being claimed to the extent that the system gets data from the device. Because the device has not been positively claimed as part of the system it does not matter what the device is. The claimed system has in intended use of an "exercise device" but that is the extent that this limitation will get patentable weight. The system of Klein receives data in the same manner as claimed.

3. Claims 1-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Usui (5956697).

For claims 1-30, Usui discloses the charging of a time based fee for Internet access. The system of Usui has a database of information and a processor as claimed.

Art Unit: 3629

Usui charges a fee based on how long one is on the Internet. With respect to the recitation of "exercise device", one can do a mathematical exercise with a computer while on the Internet; therefore, Usui discloses an exercise device. The examiner has looked to the instant specification and the term "exercise device" has no particular definition set forth, so the broadest reasonable interpretation of this term includes a device to perform any kind of exercise on (math exercise, an exercise in hand/eye coordination, mental exercise).

4. Claims 31,32, are rejected under 35 U.S.C. 102(b) as being anticipated by Alessandri (5916063).

For claims 31,32, Alessandri discloses a system that has a memory device for the storage of a plurality of users information. A processor is also disclosed that operates as claimed. User ID is established so the system knows who the user is so that prior records can be retrieved and health advice is then given out.

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kokubo et al. (6157315) discloses the rental of bikes. Cohen et al. (20010049320) discloses the pricing of exercise equipment to the amount of usage they get.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Ruhl whose telephone number is 703-308-2262. The examiner can normally be reached on Monday through Friday.

Art Unit: 3629

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 703-308-2702. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DENNIS RUHL
PRIMARY EXAMINER